

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIMOTHY O’SULLIVAN, et al.,)	
)	
Plaintiffs,)	
)	
-against-)	Civil Action No. 1:17-cv-08709-LTS-GWG
)	
DEUTSCHE BANK AG, et al.,)	
)	
Defendants.)	
)	

**AFFIDAVIT OF CHRISTOPHER G. PAULOS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR PRESERVATION ORDER**

I, Christopher G. Paulos, hereby affirm under the penalty of perjury as follows:

1. I am a Partner at Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., counsel for Plaintiffs, and I have been admitted *Pro Hac Vice* to practice before this Court.
2. This Affidavit is made to comply with Judge Gabriel Gorenstein’s Order entered on October 12, 2018, and is based on first-hand knowledge of the facts set forth within.
3. On Monday July 30, 2018, I used the internet to research the appropriate methods of effectuating service upon the New York Department of Financial Services (NYDFS). From this research I obtained the telephone number for the NYDFS “hotline” – (800)-342-3736.
4. On the same day, I called the NYDFS hotline to confirm the appropriate person to serve the Court’s Order and related documents, and spoke to an operator who was unable to provide a specific name or address to use for service of the Order and related documents.
5. During my internet research, I also searched the NYDFS website using the term “Service of Process” in the search tool provided, and located the webpage located at: https://www.dfs.ny.gov/insurance/faqs/faqs_serv_pro_conind.htm.

6. This webpage contained the following information:

Service may be made by mailing or delivering the papers to the Department as follows:

By mail: addressed to New York State Department of Financial Services, Office of General Counsel, One Commerce Plaza, Albany, NY 12257.

In person: to New York State Department of Financial Services, Office of General Counsel, One State Street, New York, NY 10004, or to One Commerce Plaza, Albany, NY 12257.

7. On July 30, 2018, I emailed Mr. George Bogdan, Senior Attorney, at the NYDFS informing him of the Court's Order and asking him to confirm the appropriate method and address for service of the Order and related documents, citing to the addresses provided on the NYDFS website (above). *See* Doc. No 152-1, Ex. A.
8. Mr. Bogdan's contact information is:¹

George Bogdan
Senior Attorney
Department of Financial Services
One State Street
New York, New York 10004-1417
FAX: (212) 709-1655
PHONE: (212) 480-4758
EMAIL: george.bogdan@dfs.ny.gov

9. On August 1, 2018, Mr. Bogdan confirmed that his office would not accept service by mail or post and he indicated that I should serve the agency in person through the Office of General Counsel, One State Street, 20th Floor, New York, NY 10004. *Id.*
10. On August 2, 2018, I called Mr. Bogdan to confirm that he was the appropriate person to serve in-person and whether he would be responsible for responding to the Motion for Preservation Order. During this call Mr. Bogdan confirmed that by using in-person service at the aforementioned address, NYDFS would consider service properly

¹ This information is being provided to comply with the Court's Order issued on October 12, 2018. *See* Doc. No. 169.

effectuated and that his office, having handled our prior FOIL requests, was already familiar with the matter and would be responsible for responding to the Motion should they be inclined to respond. Mr. Bogdan also stated that NYDFS has a “15 year” retention period for its “enforcement files.”

11. On August 2, 2018, based upon the confirmation of Mr. Bogdan, I retained the services of Nicolletti & Harris, Inc., to effectuate service of the Order and related documents in-person at the NYDFS, Office of General Counsel, One State Street, 20th Floor, New York, NY 10004.
12. On August 3, 2018, my office was notified by Nicoletti & Harris that Mr. Aaron McIntosh had successfully served NYDFS at its Office of General Counsel, One State Street, 20th Floor, New York, NY 10004 at 1:31PM that day. A true and authentic copy of the Affidavit of Service provided by Mr. Aaron McIntosh was attached to my prior Declaration submitted to the Court. *See* Doc. No 152-1, Ex. C – Affidavit of Service.
13. Pursuant to the Court’s Order issued on October 12, 2018, I telephoned George Bogdan at the NYDFS to inform him of the Oct. 12 Order, and the new deadline for his agency to respond to the pending motion. I also asked him to confirm who, specifically, from his office would be responsible for handling the response on behalf of the agency. While Mr. Bogdan confirmed that the NYDFS had indeed been personally served on August 2, 2018, he stated that he was not the specific person responsible for a response, and at the moment he was unable to identify who that person was, however, he would refer my inquiry to the appropriate person.
14. After the telephone call on October 15, 2018, I emailed George Bogdan and provided him a copy of the Oct. 12 Order, and again asked him to provide the contact information of

the person who would be responsible for the NYDFS response. *See* Ex. A – 10.15.2018 Email to G. Bogdan.

15. On October 18, 2018, I followed up with George Bogdan, again asking for the contact information of the specific person responsible for responding to the motion on behalf of NYDFS. Mr. Bogdan responded to my email and identified Mr. Gene Brooks, and indicated that Mr. Brooks would “call me in the morning.” *See* Ex. B – 10.18.2018 Emails between C. Paulos and G. Bogdan.

16. As provided by George Bogdan, Mr. Brooks’ contact information is:²

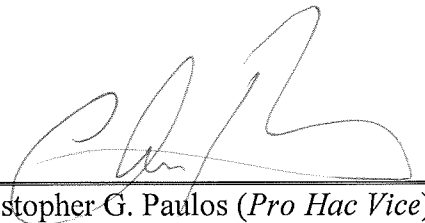
Gene Brooks, Esq.
PHONE: 212-709-1641
EMAIL: Gene.Brooks@dfs.ny.gov

17. On October 19, 2018, having not heard from Mr. Brooks by 12:00PM Eastern, I called him. I spoke to Mr. Brooks. He confirmed that he is aware of the pending motion and the Court’s orders, and he also indicated that the NYDFS was working on coming into compliance with our request for preservation of potential evidence and that he would provide me with more information at “the first of next week.” I followed this phone call with a confirmatory email. *See* Ex. C – 10.19.2018 Email to G. Brooks.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

² This information is being provided to comply with the Court’s Order issued on October 12, 2018. *See* Doc. No. 169.

Executed on October 19, 2018, in Pensacola, Florida.

By: 
Christopher G. Paulos (*Pro Hac Vice*)
Florida Bar No. 0091579
**LEVIN, PAPANTONIO, THOMAS, MITCHELL,
RAFFERTY AND PROCTOR, P.A.**
316 South Baylen Street, Suite 600
Pensacola, Florida 32502
Telephone: 850.435.7000
Facsimile: 850.436.6123
Email: cpaulos@levinlaw.com

Counsel for Plaintiffs

STATE OF Florida

COUNTY OF Escambia

BEFORE ME, the undersigned authority, on this day personally appeared Christopher G. Paulos, known to me to be the person whose name is subscribed to the foregoing Affidavit of Christopher G. Paulos, and acknowledge to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein expressed.

Witness my hand and official seal on this 19th day of October, 2018.


NOTARY PUBLIC



EXHIBIT A

Christopher Paulos

From: Christopher Paulos
Sent: Monday, October 15, 2018 3:55 PM
To: 'Bogdan, George (DFS)'
Cc: Elizabeth Felps; Randy Crowder; Troy Bouk; Jeremy Tor (jtor@spanglaw.com); Chad Ihrig (cihrig@nixlaw.com); Seth Katz (SKatz@burgsimpson.com); Chris Dyer (CDyer@lucasmagazine.com)
Subject: RE: Service of Fed. Ct. Order Re: Motion for Preservation of Documents: FOIL No. 2017-069752
Attachments: O'Sullivan v. Deutsche Bank, et al. - SDNY-Order RE Preservation-NYDFS-D....pdf
Importance: High

Dear George:

I am sending this email to you in an effort to comply with a recent order issued by Magistrate Judge Gabriel W. Gorenstein in the case *O'Sullivan v. Deutsche Bank, et al.* Case No. 1:17-cv-08709-LTS-GWG.

As we previously discussed, my clients were ordered to serve upon the NYDFS our motion for preservation order and other documents related thereto, and to provide notice to your office of that order and the deadline to respond. Pursuant to your instructions, we served your office in person via process server on August 2, 2018.

As of today, the NYDFS has not responded, and thus on October 12, 2018, the Court issued a different order providing your office another opportunity to respond to the motion. The deadline for the response is October 26, 2018. Judge Gorenstein also ordered the Plaintiffs "to make contact with an attorney at each of these offices [NYDFS & DANY] by means of telephone and/or email, and to transmit a copy of this Order to that attorney. In addition, on or before October 19, 2018, plaintiffs shall file a sworn statement indicating their efforts to comply with this directive. The sworn statement shall include the names, email addresses, and telephone numbers of the attorneys."

Attached is a copy of the Oct. 12 Order.

Pursuant to this order, I also spoke to you by phone this afternoon and you indicated that your office had in fact been served in August and that someone else from your office was responsible for handling the response. As such, I respectfully request that you share this email correspondence with the appropriate person at your agency and ask they contact me. In the meantime, if you could provide me with that person's contact information, I would greatly appreciate it, as it will facilitate my compliance with this order.

Should you wish to contact me directly, please do not hesitate to do so.

Thank you,

Chris Paulos
850-435-7067

EXHIBIT B

Christopher Paulos

From: Bogdan, George (DFS) <George.Bogdan@dfs.ny.gov>
Sent: Thursday, October 18, 2018 6:16 PM
To: Christopher Paulos
Subject: RE: Service of Fed. Ct. Order Re: Motion for Preservation of Documents: FOIL No. 2017-069752

Follow Up Flag: FollowUp
Flag Status: Flagged

My apologies for the delay. Gene Brooks, Esq. will call you in the morning. His telephone # is 212 709 1641. Brooks, Gene (DFS) <Gene.Brooks@dfs.ny.gov>

George Bogdan
Senior Attorney
Department of Financial Services
One State Street
New York, New York 10004-1417
FAX: (212) 709-1655
(212) 480-4758
george.bogdan@dfs.ny.gov

From: Christopher Paulos [mailto:cpaulos@levinlaw.com]
Sent: Thursday, October 18, 2018 4:08 PM
To: Bogdan, George (DFS) <George.Bogdan@dfs.ny.gov>
Cc: Elizabeth Felps <efelps@levinlaw.com>; Randy Crowder <rcrowder@levinlaw.com>; Troy Bouk <tbouk@levinlaw.com>; Jeremy Tor (jtor@spanglaw.com) <jtor@spanglaw.com>; Chad Ihrig (cihrig@nixlaw.com) <cihrig@nixlaw.com>; Seth Katz (SKatz@burgsimpson.com) <SKatz@burgsimpson.com>; Chris Dyer (CDyer@lucasmagazine.com) <CDyer@lucasmagazine.com>
Subject: RE: Service of Fed. Ct. Order Re: Motion for Preservation of Documents: FOIL No. 2017-069752

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Dear George:

I wanted to follow up with you prior to drafting of my affidavit that is to be filed tomorrow with Judge Gorenstein.

I have not yet heard back from anyone at your agency on these matters.

If there is someone else specifically that I should be dealing with, please provide me their contact information and I will contact them directly.

Thank you for your assistance.

Sincerely,

Chris

From: Christopher Paulos
Sent: Monday, October 15, 2018 3:55 PM

EXHIBIT C

Christopher Paulos

From: Christopher Paulos
Sent: Friday, October 19, 2018 11:37 AM
To: 'Gene.Brooks@dfs.ny.gov'
Cc: Jeremy Tor (jtor@spanglaw.com); Chad Ihrig (cihrig@nixlaw.com); Seth Katz (SKatz@burgsimpson.com); Chris Dyer (CDyer@lucasmagazine.com); Elizabeth Felps; Randy Crowder
Subject: FW: O'Sullivan Preservation Efforts

Dear Mr. Brooks,

Thank you for speaking with me by telephone this afternoon.

I appreciate you confirming your awareness of the pending motion and the Court's orders, and for also confirming that NYDFS is working on coming into compliance with our request for preservation of potential evidence, and that you will be able to provide more detail and/or confirm such efforts with me next week.

Thank you for your attention to this matter.

Sincerely,

Christopher G. Paulos

Shareholder

Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.

316 South Baylen Street, Suite 600, Pensacola, Florida 32502

Phone: 850-435-7067

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